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CALIFORNIA PURE FOOD ACT

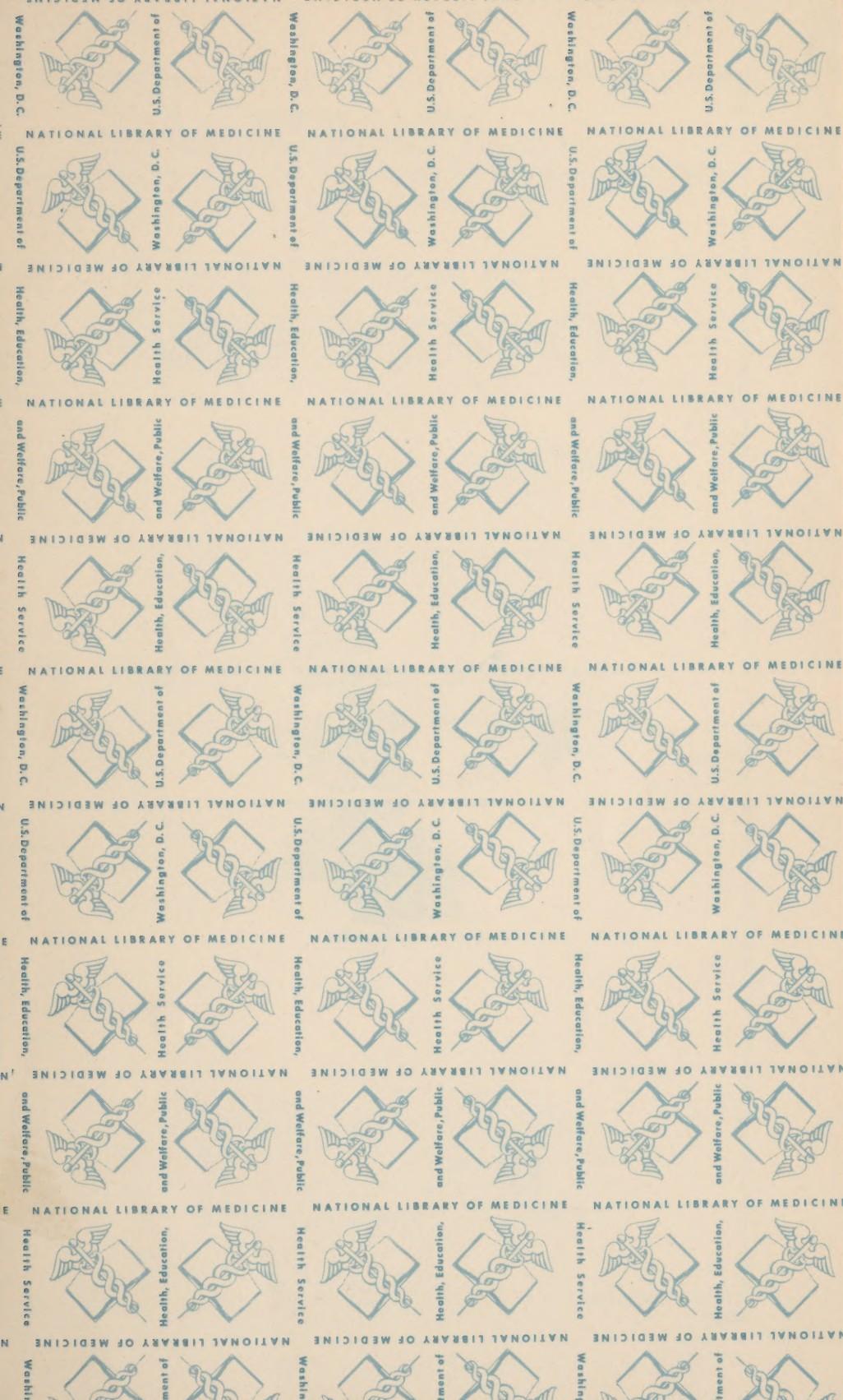
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STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH

*California Laws, statutes, etc.*

# CALIFORNIA PURE FOODS ACT

1939

ACT OF CALIFORNIA LEGISLATURE  
EFFECTIVE JANUARY 1, 1940

THIS PAMPHLET CONTAINS THE AMENDMENTS  
MADE BY THE LEGISLATURE TO THE  
YEAR 1945, INCLUSIVE

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ISSUED BY  
STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH  
BUREAU OF FOOD AND DRUG INSPECTIONS

624 PHELAN BUILDING, SAN FRANCISCO (2)  
703 CALIFORNIA STATE BUILDING, LOS ANGELES (12)

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## CALIFORNIA PURE FOODS ACT

CHAPTER 731, STATUTES 1939

APPROVED JULY 13, 1939

EFFECTIVE JANUARY 1, 1940

### AMENDED

Chapter 1042	Statutes 1941
Chapter 1047	Statutes 1941
Chapter 838	Statutes 1943
Chapter 1208	Statutes 1945

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## CALIFORNIA PURE FOODS ACT

Chapter 731, Statutes 1939, approved July 13, 1939

Effective January 1, 1940

*An act adding Division 21, comprising Chapter 3 and Sections 26450 to 26624, inclusive, to the Health and Safety Code, relating to adulterating, mislabeling, misbranding, false advertising, and sale of foods and the powers of the State Department of Public Health in relation thereto.*

[Approved by Governor July 13, 1939. Filed with Secretary of State July 22, 1939.]

*The people of the State of California do enact as follows:*

SECTION 1. Division 21, comprising Chapter 3 and Sections 26450 to 26624 inclusive, is hereby added to the Health and Safety Code, to read as follows:

### DIVISION 21. DRUGS, FOODS, AND COSMETICS

#### CHAPTER 3. FOODS

##### Article 1. General Provisions

26450. "Food" includes all articles used for food, drink, "Food" liquor, confectionery, condiment, or chewing gum by man or other animals, whether such articles are simple, mixed or compound.

26451. "Package" includes any phial, bottle, jar, demi-<sup>"Package"</sup> john, carton, bag, case, can, box or barrel or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer, for inclosing or containing any article of food.

26452. The term "label" means a display of written, "Label" printed or graphic matter upon the immediate container of any article.

26453. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. Labeling requirement

26454. The term "immediate container" does not include "Immediate container" package liners.

26455. The term "labeling" means all labels and other "Labeling" written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

Determina-  
tion of  
misleading  
labeling, etc.

26456. If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, emblem, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

"Advertisement"

26457. The term "advertisement" means all representations or any representation disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

(Amended by Stats. 1943, Ch. 838.)

"Contami-  
nated with  
filth"

26458. The term "contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

Construction  
of chapter

26459. The provisions of this chapter regarding the selling of food, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale, dispensing, and giving of any such article; and the supplying or applying of any such articles in the conduct of any food establishment.

"Federal  
act."  
U.S.C., Title  
21, Ch. 9

Ag. C. and  
Stats. 1935,  
p. 1123

26460. The term "Federal act" means the Federal Food, Drug and Cosmetic Act.

26461. The provisions of this division shall be so construed as to not be in conflict with the provisions of the Agricultural Code, or with the provisions of the Alcoholic Beverage Control Act and the rules and regulations adopted pursuant thereto, and in the event of a conflict, the provisions of the Alcoholic Beverage Control Act or the rules and regulations adopted pursuant thereto shall control.

Beer

26462. Beer, being subject to the Alcoholic Beverage Control Act in other respects, shall be subject only to the provisions of this chapter which relate to adulteration and misbranding.

26463. The sections contained in Chapter 3 of Division 21 of the Health and Safety Code may be known as the California Pure Foods Act. (Short Title.)

(Added by Stats. 1943, Ch. 838.)

## Article 2. Adulteration

When  
deemed  
adulterated  
Components

26470. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be

considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Section 26471; or

(3) If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed or held under <sup>Production</sup> insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

(5) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or which has been fed upon the uncooked offal from a slaughterhouse; or

(6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(7) If it is a canned poultry product or products containing poultry meat which does not comply with any standards of freshness and purity prescribed by the board under Article 6 of this chapter, notwithstanding a compliance with the labeling requirements of Section 26494.

Poultry products

(Added by Stats. 1939, Ch. 731; amended by Stats. 1941, Ch. 1149.)

26471. Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or can not be avoided by good manufacturing practice; shall be deemed to be unsafe for purposes of the application of clause (2) of Section 26470.

Added substances

If such substance is so required or can not be so avoided, <sup>Tolerances</sup> the board shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 26470.

While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance within the tolerance allowed, be considered to be adulterated within the meaning of clause (2) of Section 26470.

In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or can not be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Acknowledged

Components omitted

26472. A food shall be deemed to be adulterated:

- (a) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or
  - (2) If any substance has been substituted wholly or in part therefor; or
    - (3) If damage or inferiority has been concealed in any manner; or
      - (4) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.
  - (b) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 per centum, harmless natural gum, and pectin. This subsection shall not apply to any confectionery by reason of its containing less than one-half of 1 per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.
  - (c) If it bears or contains a coal tar other than one from a batch which has been certified by the Federal Security Agency, Food and Drug Administration.
  - (d) If any mineral oil has been added thereto or mixed or packed therewith.

Meat

(e) If it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, benzoate of soda or any other chemical preservative which is not approved by the United States Bureau of Animal Industry, or the United States Department of Agriculture, or the Bureau of Animal Industry of the California State Department of Agriculture, or the California State Board of Public Health.

(f) If it be chopped or ground beef, or hamburger containing any substance other than the striated muscle of cattle; and the total fat content (determined by ether extract method of analysis) derived from cattle is in excess of 25 per cent.

Other meats

(g) Nothing in this article shall be deemed to prohibit the introduction into meat or the addition to meat of common salt, sugar, wood smoke, cider vinegar, wine vinegar, malt vinegar, sugar vinegar, glucose vinegar, spirit vinegar, pure spices, saltpeter, nitrate of soda and nitrite of soda in natural state or in form of brine or pickling solutions; provided, no such substances shall increase the green or original weight by more than 10 per cent of products which are not smoked or cooked and by not more than 1 per cent of the green or original weight of products which are cooked or smoked. In the case of meat food products such as sausage or sausage loaves, 10 per cent added water shall be permitted and allowed in smoked or cooked products of such nature, and 3 per cent in said products which are not cooked or smoked.

(h) If it be alimentary paste and contains any artificial color derived from coal tar or vegetable substances.

(Added by Stats. 1939, Ch. 731; amended by Stats. 1941, Ch. 1042; by Stats. 1943, Ch. 838.)

26473. Whenever the board finds after investigation that the distribution in the State of California of any class of food may, by reason of contamination with micro-organisms during manufacture, processing or packing thereof in any locality, be injurious to health, and that such injurious nature can not be adequately determined after such articles have entered commerce, the board then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health.

26474. After the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor or packer holds a permit issued by the board as provided by such regulations.

26475. The board is authorized to suspend immediately upon notice any permit issued under authority of Section 26473 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the board shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

26476. Any officer or employee duly designated by the board shall have access to any factory or establishment, the operator of which holds a permit from the board for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit.

### Article 3. Misbranding

26490. A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed or filled as to be misleading.

(Amended by Stats. 1943, Ch. 838.)

False labeling,  
imitation, etc.

Contents  
of label

26491. A food shall be deemed to be misbranded if in package form, unless it bears a label containing (1) the name and place of business of the manufacture, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

Under clause (2) of this section reasonable variation shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board.

(Amended by Stats. 1943, Ch. 838.)

Same:  
Display

26492. A food shall be deemed misbranded if any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or emblems, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(Amended by Stats. 1943, Ch. 838.)

Standards:  
Identify

26493. A food shall be deemed to be misbranded if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Sections 26540 and 26541 unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food.

(Amended by Stats. 1943, Ch. 838.)

Quality

26494. A food shall be deemed to be misbranded if it purports to be or is represented as:

(1) A food for which a standard of quality has been prescribed by regulations as provided by Sections 26540 and 26541 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by Sections 26540 and 26541 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(Amended by Stats. 1943, Ch. 838.)

Fill of  
container

26495. A food shall be deemed to be misbranded if it is not subject to the provisions of Section 26493, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient. Spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each.

Labels on  
certain  
foods

The requirements of clause (2) of this section shall not apply <sup>Exceptions</sup> to any carbonated beverage the ingredients of which have been fully and correctly disclosed to the board in the manner described by clause (2) above in a sworn affidavit, nor shall such requirements apply to beer as defined in the Alcoholic Beverage Control Act.

To the extent that compliance with the requirements of clause (2) of this section is impractical or results in deception or unfair competition, exemption shall be established by regulations promulgated by the board.

(Amended by Stats. 1943, Ch. 838.)

26496. A food shall be deemed to be misbranded :

Dietary foods

(1) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(2) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact. To the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board.

The provisions of this section and Sections 26493 and 26495 <sup>Exceptions</sup> with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream.

(Amended by Stats. 1943, Ch. 838.)

#### Article 4. Advertising

26500. An advertisement of a food shall be deemed to be <sup>False advertisement</sup> false if it is false or misleading in any material particular.

26501. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this chapter by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the board to furnish the board the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the State of California who causes him to disseminate such advertisement.

26501.1. With respect to the advertisement of alcoholic <sup>Alcoholic beverages</sup> beverages, in the event of a conflict between the provisions of this chapter and the Alcoholic Beverage Control Act, the Alco- <sup>Stats. 1935, p. 1123</sup> holic Beverage Control Act shall control.

#### Article 5. Prohibitions

26510. The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale, or advertising within the State of California, or the introduction into this State from any other State, Territory, or the <sup>Manufacture, etc.</sup>

District of Columbia or from any foreign country, of any article of food which is adulterated or misbranded is prohibited.

(Amended by Stats. 1943, Ch. 838.)

**Importation** 26511. Any person who imports or receives from any other State or Territory or the District of Columbia or from any foreign country, or who having so received delivers for pay or otherwise or offers to deliver to any other person, any article of food which is adulterated or misbranded, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale, or advertise in the State of California any such adulterated or misbranded food, shall be guilty of a misdemeanor punishable as provided in Section 26519.

(Amended by Stats. 1943, Ch. 838.)

**Exports** 26512. No article of food shall be deemed adulterated or misbranded within the provisions of this chapter when prepared for export beyond the jurisdiction of the United States and prepared or packed according to specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which the article is intended to be shipped.

If such foods are in fact sold or kept or offered for sale for domestic uses and consumption, then this section shall not exempt the article from the operation of any provisions of this chapter.

(Amended by Stats. 1943, Ch. 838.)

**Alteration of labels** 26513. The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food is unlawful if such act results in such article being misbranded.

**Forging of labels** 26514. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification emblem authorized or required by regulations promulgated under the provisions of this chapter is prohibited.

26515. The adulteration or misbranding of any food is hereby prohibited.

26516. The dissemination of any false advertisement of any food is hereby prohibited.

**Refilling** 26517. (a) No person shall sell, offer for sale, or keep for sale distilled spirits in any package which has been refilled or partly refilled.

(b) No person shall refill or sell, or cause to be refilled for sale any distilled spirits package.

(c) No person, who, in response to an inquiry or request for any brand, type, or character of alcoholic beverage, shall sell or offer for sale a different brand, type or character, without informing the purchaser of such difference.

(Amended by Stats. 1945, Ch. 1208.)

26518. The possession, sale, or offering for sale of any <sup>Evidence</sup> adulterated or misbranded article of food by any manufacturer, producer, jobber, packer, or dealer in food, or broker, commission merchant, agent, employee, or servant of any such manufacturer, producer, jobber, packer, or dealer, shall be prima facie evidence of the violation of this chapter.

(Amended by Stats. 1943, Ch. 838.)

26519. Any person who violates any of the provisions of <sup>Penalties</sup> this chapter is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) or more than five hundred dollars (\$500), or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

26520. No dealer shall be prosecuted under the provisions <sup>When prosecution forbidden</sup> of this chapter if after receipt of an article he has used reasonable care in the use and handling thereof and he can produce a guarantee signed by the wholesaler, jobber, manufacturer, or other party located or residing in the United States from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this chapter; provided, however, that as to food contained in an original unbroken package, no retailer, who after the receipt of such package has used reasonable care in the use and handling thereof, shall be prosecuted under this chapter for a violation of any provision thereof in connection with any article received by such retailer in the regular channels of trade and as usual first-class merchantable stock and not as seconds, or damaged articles or merchandise or job lots purchased under such conditions as to put the purchaser on notice that such merchandise was not regular first-class merchandise. <sup>Guaranty</sup>

(Added by Stats. 1939, Ch. 731; amended by Stats. 1941, Ch. 1042; by Stats. 1943, Ch. 838.)

26521. Such guaranty may be either general or special and <sup>same</sup> must be produced prior to the time of certification of facts to the district attorney for prosecution.

26522. A general guaranty shall guarantee without condition or restriction all of the products or articles produced, prepared, compounded, packed, distributed, or sold by the guarantor as not adulterated or misbranded within the meaning of this chapter. <sup>General guaranty</sup>

(Amended by Stats. 1943, Ch. 838.)

26523. A special guaranty shall guarantee in the same <sup>Special guaranty</sup> manner as a general guaranty the particular articles listed in an invoice of the articles, and shall be attached to or shall fully identify such invoice.

Seller's name, etc.

26524. To afford protection all guaranties must contain the name and address of the party or parties making the sales of such articles to the person.

Article covered

26525. A guaranty shall protect a person only where the article covered by such guaranty remains identical, both as to composition and labeling, with the article as composed and labeled when received by the person from the guarantor.

Guaranty under Federal act

26526. If the guaranty is to the effect that such article is not adulterated or misbranded within the meaning of the Federal act it shall be sufficient for all the purposes of this chapter and have the same force and effect as though it referred to this chapter whether given by a person residing in the United States or elsewhere.

(Amended by Stats. 1943, Ch. 838.)

Nonresident guarantor

26527. In case the wholesaler, jobber, manufacturer or other party making such guaranty to the person resides without this State and it appears from the certificate of the Chief of the Division of Laboratories that such article or articles were adulterated or misbranded, within the meaning of this chapter or the Federal act, the district attorney must forthwith notify the Attorney General of the United States of such violation.

(Amended by Stats. 1943, Ch. 838.)

## Article 6. Administration

Standards

26540. Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board may promulgate regulations establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container.

Beer

Fruits and vegetables

Fill of container

Quality

Identity

No standard of identity or fill of container shall be established for beer as defined in the Alcoholic Beverage Control Act. No definition and standard of identity, and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avocados, cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the board shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. Any definition and standard of identity prescribed by the board for avocados, cantaloupes, citrus fruits, or melons shall relate only to maturity and to the effects of freezing.

Beer containers

26540.1. The board shall not prescribe requirements respecting the size or type of containers for beer as defined in the Alcoholic Beverage Control Act.

26540.2. The State Board of Public Health is hereby <sup>wine standards</sup> empowered under this section to promulgate regulations establishing standards of purity for wine; provided, that the board shall not prescribe requirements respecting the size or type of containers for wine.

26541. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. All definitions and standards promulgated pursuant to this chapter shall not in any instance require a higher standard than the standards required pursuant to the definitions currently promulgated by the Federal Security Agency, Food and Drug Administration. Such definitions and standards of identity promulgated by the board for distilled spirits shall not be inconsistent with similar standards promulgated by the United States Bureau of Internal Revenue, Alcohol Tax Unit, or other Federal agency; provided, however, that the provisions of this section shall not apply to wine.

(Added by Stats. 1939, Ch. 731; amended by Stats. 1941, Ch. 1042 and Ch. 1147; by Stats. 1943, Ch. 838.)

26542. The authority to promulgate regulations for the <sup>Regulations</sup> efficient enforcement of this chapter is vested in the board. The board shall promulgate regulations exempting from the provisions of this chapter food which is in accordance with the normal practice of the trade introduced or offered for introduction into trade and which is being delivered to an establishment where it is to be processed, labeled or packed on condition that such food shall conform with the provisions of this act upon its removal from such processing, labeling or packing establishment. The regulations promulgated and the definitions and standards prescribed pursuant to this chapter shall not require higher standards and shall not be more restrictive than the definitions, standards and regulations which are in force, or promulgated by the Federal Security Agency, Food and Drug Administration, under the provisions of the Federal act, in the event that any such definitions, standards, or regulations are in force thereunder. The violation of a regulation promulgated under this chapter shall be deemed to be a violation of this chapter.

(Added by Stats. 1939, Ch. 731; amended by Stats. 1941, Ch. 1147.)

26543. Hearings authorized or required by this chapter <sup>Hearings</sup> shall be conducted by the board or such officer, agent, or employee as the board may designate for the purpose.

26544. Before promulgating any regulation, the board shall <sup>Notice</sup> give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board. The effective <sup>Effective date of regulations</sup> date shall not be prior to 90 days after the promulgation of the

regulation. Such regulation may be amended or repealed in the same manner as is provided for its adoption.

In the case of a regulation amending or repealing any regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

Examination

26545. The board shall require examinations to be made of samples secured under the provisions of this chapter to determine whether or not any provision of this chapter is being violated.

Agents of board

26546. The board may appoint such agents as it may deem necessary.

Sheriffs

26547. The sheriffs of the respective counties of the State are hereby appointed agents for the enforcement of this chapter.

Inspection

26548. Any agent shall have free access, at all reasonable hours, for the purpose of examining any place where it is suspected that any article of adulterated or misbranded food exists.

(Amended by Stats. 1943, Ch. 838.)

Samples

26549. If a sale is refused upon a tender of the market price of the articles, the agent may take from any person samples of any articles suspected of being adulterated or misbranded, and shall deliver or forward such samples to the State laboratory for examination and analysis.

(Amended by Stats. 1943, Ch. 838.)

Penalty

26550. Any person who refuses to sell to any agent of the board any sample of food upon tender of the market price therefor, or who conceals any food from such officer, or who withholds from the officer information respecting the place where such food is kept or stored is guilty of a misdemeanor punishable as provided in Section 26519.

Powers of agents, etc.

26551. The Chief of the Bureau of Food and Drug Inspections and the agents and inspectors of the State Board of Public Health shall have the powers possessed by peace officers in this State.

“Dump sheets”

26552. Whenever the board makes a written demand upon any distiller, rectifier or blender of liquors of any nature whatsoever within this State to produce a certified copy of those records kept by the distiller, rectifier or blender, which are commonly designated or known as “dump sheets” within the meaning of the Federal Internal Revenue Act, the records shall be delivered to the board within a reasonable time not exceeding 30 days. The refusal to present such certified copies or the falsification thereof, shall constitute a misdemeanor punishable as provided in Section 26519. Whenever there has been a demand for and refusal to deliver the records, upon petition any court or judge thereof having jurisdiction shall order the delivery of the records.

Inspection

26553. The board or its duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed,

packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, in commerce, for the purpose:

(1) Of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of this chapter are being violated; and

(2) To secure samples or specimens of any food after paying or offering to pay for such sample.

26554. Whenever it has satisfactory evidence of the violation of any of the provisions of this chapter respecting the adulteration or misbranding of foods and after the hearing provided in Section 26564, the board shall report such facts to the district attorney of the county where the law is violated. Report of violation

26555. Nothing in this chapter shall be construed as requiring the board to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the board believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning. Written notice of warning

26556. The board may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. Reports of court action

26557. The board may cause to be disseminated such information regarding food as the board deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the board from collecting, reporting and illustrating the results of the investigations of the board. Information

(Added by Stats. 1939, Ch. 731.)

26558. There is a State laboratory for the analysis and examination of foods, drugs, devices and cosmetics. The laboratory shall be under the supervision of the board and shall be located at such place as the board may select. State laboratory

26559. The board shall appoint a Chief of the Bureau of Food and Drug Inspections who shall have such qualifications and perform such duties as may be required by the board. Chief, Bureau of Food and Drug Inspections

The board may employ and fix the compensation of other clerical and professional assistants.

26560. The director shall require the Chief of the Division of Laboratories to make examinations and analyses of foods which are on sale in California and which are suspected of being adulterated or misbranded. Analyses

(Amended by Stats. 1943, Ch. 838; by Stats. 1945, Ch. 1208.)

26561. Whenever evidence indicates or examination or analysis shows that adulterated or misbranded food has been on sale in this State, the Chief of the Division of Laboratories of the State department shall forthwith report to the director and shall promptly transmit a certificate of the facts so found. Report on adulteration, etc.

(Amended by Stats. 1943, Ch. 838; by Stats. 1945, Ch. 1208.)

- Same 26562. Whenever evidence indicates that adulterated or misbranded food has been on sale in this State, the Chief of the Bureau of Food and Drug Inspections shall forthwith report to the director and shall promptly transmit a certificate of the facts so found.  
(Amended by Stats. 1943, Ch. 838; by Stats. 1945, Ch. 1208.)
- Evidence 26563. Every certificate certified to by the Chief of the Division of Laboratories or by the Chief of the Bureau of Food and Drug Inspections shall be *prima facie* evidence of the facts therein stated.
- Notice of violation 26564. When the certificate certified to by the Chief of the Division of Laboratories of the State department or when the certificate certified to by the Chief of the Bureau of Food and Drug Inspections shows that any provisions of this chapter have been violated, notice of that fact, together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained, or who executed the guaranty, as provided in this chapter. A time at which the parties may be heard shall be set.  
(Amended by Stats. 1945, Ch. 1208.)
- Hearings 26565. The hearing shall be held at such place as the board or the person conducting the hearing may designate. The hearings shall be private and confined to the consideration of fact. Parties interested may appear in person or by attorney and may propound interrogatories and submit oral or written evidence to show any fault or error in the findings made by the State laboratory.
- District attorney 26566. If the examination or analysis is found to be correct, or if the party fails to appear at such hearing after notice duly given, a certificate of the facts so found shall forthwith be transmitted to the district attorney of the county in which the adulterated or misbranded food was found.  
(Amended by Stats. 1943, Ch. 838; by Stats. 1945, Ch. 1208.)
- Reports: Division of Laboratories 26567. On or before August 1st of each year, the Chief of the Division of Laboratories of the State Department shall make an annual report to the board upon adulterated or misbranded foods. The report shall include the list of cases examined by him in which adulterants were found, the list of articles found to be misbranded, and the names of the manufacturers, producers, jobbers, and sellers. The Chief of the Bureau of Food and Drug Inspection shall report at the same time on all activities of that bureau.  
(Amended by Stats. 1943, Ch. 838.)
- Bureau of Food and Drug Inspections Reports of board 26568. The board may include the reports, or any parts thereof, in the report which the board makes to the Governor.
- Quarantine 26580. Whenever a duly authorized agent of the board finds, or has probable cause to believe, that any food is adulterated, or so misbranded as to be dangerous or fraudulent, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated, or

misbranded and has been detained or quarantined, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

26581. Whenever the findings of the State laboratory or of <sup>same</sup> the Chief of the Bureau of Food and Drug Inspections show after investigation and examination, that any food found in the possession of any person is adulterated or misbranded, the food may be seized and quarantined.

(Amended by Stats. 1943, Ch. 838.)

26582. The food shall not thereafter be sold, offered for sale, removed or otherwise disposed of until further notice in writing from the board, the director, or the Chief of the Bureau of Food and Drug Inspections. <sup>Prohibition on disposition</sup>

(Amended by Stats. 1945, Ch. 1208.)

26583. The Chief of the Bureau of Food and Drug Inspections shall report immediately to the director all actions relating to the seizure of food and its release. <sup>Reports of seizures</sup>

(Amended by Stats. 1945, Ch. 1208.)

26584. Food found to be adulterated or misbranded may, <sup>Destruction of food</sup> by order of a court or judge, or in the absence of such order, with the written consent of the owner thereof, be seized or destroyed.

(Amended by Stats. 1943, Ch. 838.)

26585. Any superior or inferior court of this State shall have <sup>Jurisdiction of courts</sup> power to condemn food under the provisions of this article.

26586. When an article is found to be adulterated or misbranded, and is detained or quarantined under this article, the board shall petition the court in whose jurisdiction the article is detained or quarantined for a libel for condemnation of such article. When such agent has found that an article so detained or quarantined is not adulterated or misbranded, <sup>Removal of tags</sup> he shall remove the tag or other marking.

(Amended by Stats. 1943, Ch. 838.)

26587. If the court finds that a detained or quarantined article is adulterated or misbranded, after entry of the decree such article shall be destroyed at the expense of the claimant thereof, under the supervision of the agent. All court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent. <sup>Destruction</sup>

(Amended by Stats. 1943, Ch. 838.)

26588. If the adulteration or misbranding can be corrected by proper labeling or processing of the article, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, the court may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the board. The expense of such supervision shall be paid by the claimant. <sup>Correction of article</sup>

(Amended by Stats. 1943, Ch. 838.)

- Bond 26589. The bond shall be returned to the claimant of the article on representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.
- Destruction 26590. Whenever the board or any of its authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or which may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the board or its authorized agent shall forthwith condemn or destroy the same or in any other manner render the same unsalable as human food.
- Sheriff's duties 26600. On presentation to him of a verified complaint of the violation of any provisions of this chapter, the sheriff of any county of this State shall at once obtain by purchase a sample of the adulterated or misbranded food complained of, and divide the article into three parts. Each part shall be sealed by the sheriff with a seal provided for that purpose. If the package be less than four pounds in weight or in volume less than two quarts, three packages of approximately the same size shall be purchased and the marks and tags upon each package noted as above.
- (Amended by Stats. 1943, Ch. 838.)
- Same 26601. One sample shall be delivered to the party from whom procured or to the party guaranteeing such merchandise, one sample shall be sent to the Chief of the Division of Laboratories, and the third sample shall be sent to, and held under seal by, the board.
- Fees 26602. For his services under this chapter the sheriff shall be allowed the same fees for travel allowed by law to sheriffs on service of criminal process, together with such compensation as the board of supervisors of the county may deem reasonable, and all amounts expended by him in procuring and transmitting samples.
- Payment of fees 26603. The fees and amount expended shall be audited and allowed by the supervisors and paid by the county as other bills of the sheriff.
- District attorney 26604. The district attorney of each county shall prosecute all violations of the provisions of this chapter occurring within the county.
- Fines 26605. One-half of all fines collected by any court or judge for the violations of the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.
- Local inspection and enforcement divisions 26615. The board may organize and establish local food inspection and enforcement divisions with headquarters at such points and with jurisdiction over such territory as the board shall by order specify.

#### Article 7. Local Administration

26616. For the purposes of this chapter, the term "local food inspection and enforcement division" shall be construed to mean the local health department, headed by the duly appointed, qualified and acting health officer of any county, city or city and county, designated by order of the board to act as such division within the territory specified in such order. Such territory may include one or more counties, cities, or cities and counties.

26617. A local food protection and enforcement division shall make, or cause to be made, examinations and analyses of food which is suspected of being adulterated or misbranded and which is on sale within the territory where such local division has jurisdiction. <sup>Examinations</sup>

(Amended by Stats. 1943, Ch. 838.)

26618. Within the territory over which a local division has jurisdiction, the health officer of any local food protection and enforcement division and his deputies, shall have the same powers as are possessed by peace officers of this State. <sup>Powers of agents, etc.</sup>

26619. When an examination or analysis made pursuant to the provisions of Section 26617 shows that any provision of this chapter has been violated, notice of the fact, together with a copy of the findings thereof, shall be furnished to the party or parties from whom the sample was obtained, or who issued the guaranty, as provided in this chapter. <sup>Notice of violation</sup>

26620. The health officer of the local food protection and enforcement division shall set a time for a hearing, at which the parties may be heard before him. At least 15 days' notice of such hearing shall be served upon the parties interested. The hearing shall be private and confined to questions of fact. Appearances may be made in person or by attorney and testimony may be taken and evidence introduced as to the correctness of the findings made by the person making the examination or performing the analysis. <sup>Hearings</sup>

26621. If such examination or analysis be found correct, or if the party or parties fail to appear after notice duly given, the health officer conducting the hearing shall certify the facts found to the district attorney of the county in which the adulterated or misbranded food was found, sold, or offered or exposed for sale. No publication shall be made until after the hearing is concluded. <sup>District attorney</sup>

(Amended by Stats. 1943, Ch. 838.)

26622. In exercising the powers conferred upon him by Section 26547 the sheriff of a county shall furnish samples of all adulterated or misbranded foods seized or purchased by him to the health officer of the local food inspection and enforcement division, if any, having jurisdiction over the territory within which such seizure or purchase is made. In carrying out the duties imposed by Section 26600 a sheriff shall purchase an additional sample and forward the same to such health officer. <sup>Sheriff's duties</sup>

(Amended by Stats. 1943, Ch. 838.)

**Construction  
of article** 26623. The provisions of this article shall not be construed as repealing, either directly or by implication, any of the existing sections of this chapter, but shall be construed as constituting an alternative method of enforcing the same.

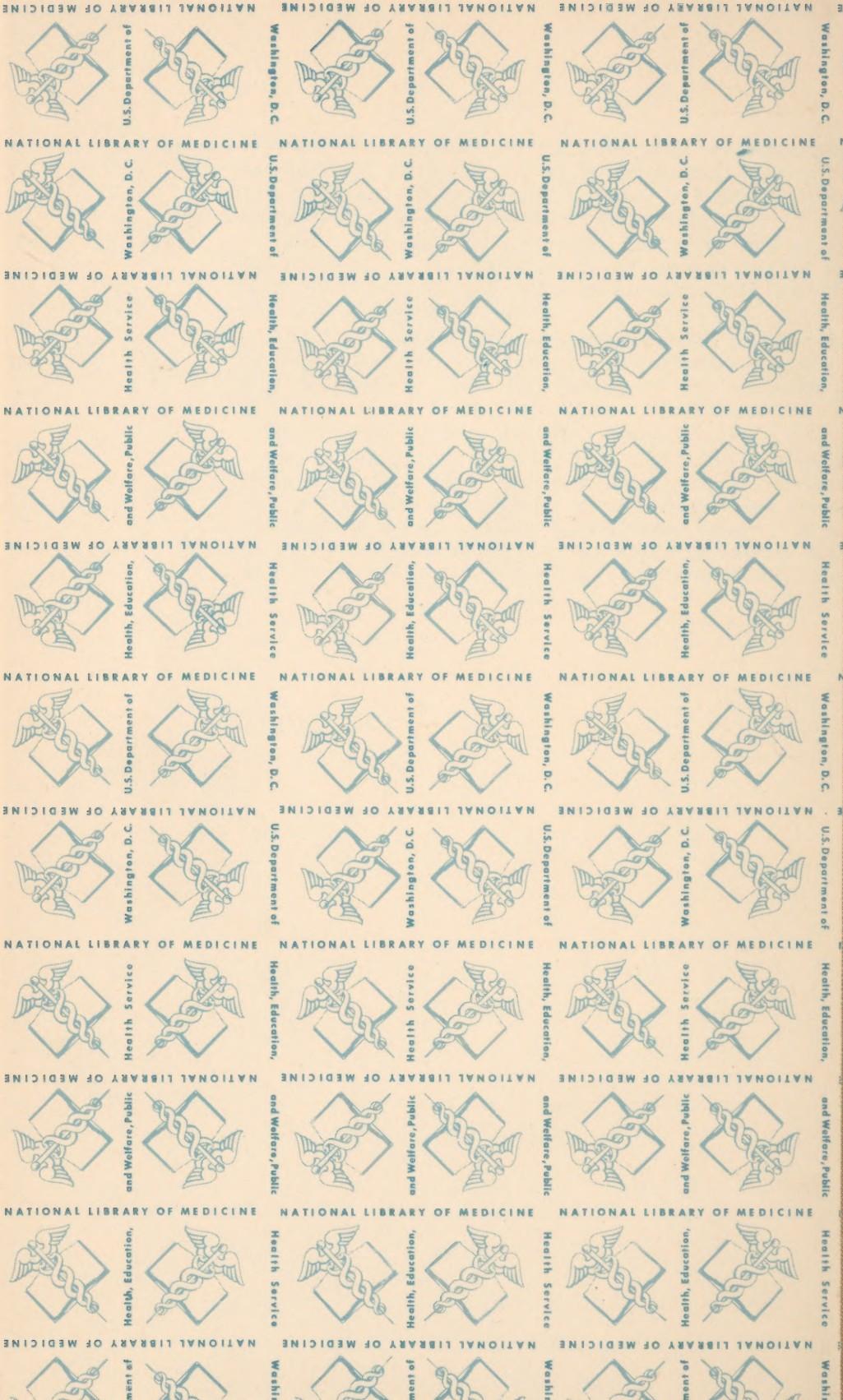
**Rules** 26624. The board may prescribe such rules and regulations relating to the operation of the local inspection and enforcement divisions as it may deem necessary fully to effectuate the provisions of this article.

SEC. 3. A decision that any provision of this act is invalid, or that any provision as applied in a particular situation is invalid, shall not affect the validity of the remainder of this act.

SEC. 4. This act shall take effect January 1, 1940.

SEC. 5. If Assembly Bill No. 1830, introduced January 24, 1939, becomes law either prior or subsequent to the time when this act becomes law, Section 1 of this act shall not be construed to add Division XXI to the Health and Safety Code, but shall be construed to add Chapter 3, comprising Sections 26450 to 26624, inclusive, to Division XXI of the Health and Safety Code.





*Gaylord*

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